Supreme Court, U.S.
FILED

(1) No. 02 10 22 DEC 3 2002

OFFICE OF THE CLERK

In The

Supreme Court of the United States

FRANK L. FARROW,

Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, THE AMERICAN POSTAL WORKERS UNION, AFL-CIO, and THE AMERICAN POSTAL WORKERS UNION LOCAL NO. 1672,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTION PRESENTED FOR REVIEW

Comes now, the question presented for review is: Does either the U.S. Middle District Court of Florida or the 11th Circuit Court of Appeals have the Constitutional authority to unlawfully usurp the Constitutional authority reserved solely for the Jury, in order to conduct an unlawful trial by motion in an alleged effort to aid the United States Postal Service to unlawfully avoid this Petitioner's 5th Amendment Right to Due Process and his lawful demand for a trial by jury in his civil action secured to this Petitioner by the 7th Amendment guaranteeing him his right to a trial by jury, as well as to allegedly deprive him of his 14th Amendment Right to equal protection under the law after the U.S. Supreme Court has already ruled in favor of this Petitioner in the similar Supreme Court case of *Bowen v. United States Postal Service*, 459 U.S. 212, 741 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525]?

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OPINIONS BELOW

The order sought to be reviewed is the District Court's Order Granting *Defendant's Motion For Summary Judgment*, prematurely and without just cause, before this Petitioner could even begin the *Discovery Phase* of his civil action in order to gather additional evidence to further establish and prove his legitimate charges against the American Postal Workers Union, the APWU Local 1672, and the United States Postal Service to an impartial jury for lawful redress.

The Circuit Court of the Eleventh Judicial Circuit affirmed the District Court's Order Granting *Defendant's Motion For Summary Judgment* on July 31, 2002.

The Circuit Court of the Eleventh Judicial Circuit entered its order denying *Appellant's Motion For Rehearing* on October 22, 2002.

BASIS FOR JURISDICTION

This Honorable Court has jurisdiction to hear this matter pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutes involved in this case are the 1st, 5th, 7th and 14th Amendments to the U.S. Constitution; 28 U.S.C.A. sec. 1337; Labor Management Relations Act, 1947, sec. 301, 29 U.S.C.A. sec. 185; National Labor Relations Act, sec. 9 as amended 29 U.S.C.A. sec. 159, and 39 U.S.C.A. sec. 409, as per United States Supreme Court

Case, *Bowen v. United States Postal Service,* 459 U.S. 212, 74 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525].

STATEMENT OF THE CASE

Frank L. Farrow is a resident of Volusia County, Florida, and over the age of 18 years and at all material times related hereto, was employed by the Defendant, USPS; a member in good standing of the Defendant, APWU, and paying dues to the Defendant, Local No. 1672, with the reasonable expectation that I would be represented fairly, impartially, in good faith and without dishonesty or malice by the APWU and its Local, which did not happen and is extensively documented.

This Petitioner has personal knowledge that the Defendants, USPS, APWU, and Local, entered into a **Collective Bargaining Agreement**, (hereinafter referred to as the "National Agreement") which was effective from November 21, 1998 through November 20, 2000, and the same terms were extended by all parties. The National Agreement was in effect at all material times herein. All Defendants USPS, APWU, and Local, have complete copies of the National Agreement, so only the copies of the Articles and Sections relevant to the Pro Se Plaintiff's Complaint And Demand For Jury Trial (Doc 1) were attached by the Pro Se Plaintiff in his Complaint And Demand For Jury Trial (Doc 1).

This Petitioner has personal knowledge that the National Agreement was entered into by the Defendants, USPS, APWU, and Local for the benefit of all of the employees in the bargaining unit and that this Petitioner, as a member of the bargaining unit, is entitled to all of the

benefits of the National Agreement, without exception or modification.

This Petitioner has attempted to utilize the National Agreement, in good faith, to try to settle any and all disputes, since Arbitrator Helburn reserved jurisdiction over any and all disputes that may arise in Arbitration No. **H94T-IH-D97064141**, without time limit, and this Petitioner is aware that those attempts were maliciously and unlawfully frustrated and obstructed by the Defendants USPS, APWU, and Local's irrational actions, and irrational lack of action when required as per the National Agreement, and willful dishonesty.

This Petitioner, in good faith, believes that on **February 10, 2001**, Arbitrator Helburn rendered a clearly erroneous Decision for Arbitration No. **H98T-IH-C 99231569**, that is completely outside the context of **Articles 15, 19, and 38** of the National Agreement and contrary to same. (Doc 1 pg 4)

This Petitioner has personal knowledge that **Article 15.5A.6** clearly states that, "all decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, **and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator . . .**" (Doc 1 pg 4)

This Petitioner, in good faith, believes that the arbitrator has clearly and in direct violation of the National Agreement altered, amended, and modified the terms of the National Agreement by erroneously claiming that an employee who is wrongfully terminated without just cause by the USPS, as determined by his ruling in Arbitration No. **H94T-1H-D 97064141**, must continue to make contact

with the USPS to inquire, whether or not, any new positions have been created during the time of his wrongful termination even though the employee should never have been unlawfully forced from his employment from the USPS in the first place and ordered to stay off of postal property.

This Petitioner has personal knowledge that **Article 38.4.A.1** of the National Agreement which clearly states, "When a vacant or newly established duty assignment is to be filled, the Employer shall post for a period of seven calendar days, a notice of intent that the duty assignment will be filled using the appropriate preferred assignment selection register and/or promotion eligibility register, except for newly established positions as defined in Article 1, Section 5. Such positions shall be posted as they are created and assigned to the craft unit. A copy of the notice of intent shall be furnished to the local Union.

In addition, any employee on sick leave or off-site training on the day of the posting shall be furnished a copy of any applicable notice of intent. **Employees absent for annual leave who have requested in writing, stating their mailing address, shall have a copy of any applicable notice of intent mailed to them . . .**"

This Petitioner has personal knowledge that **Article 38** of the National Agreement makes absolutely NO provision for an employee, who is wrongfully terminated without just cause and unlawfully forced from his position that he would have been occupying, if the USPS's willful adverse action had not occurred, to have to contact the USPS and request that a copy of any Postings be mailed to the wrongfully terminated employee on the outside chance that there may, or may not, have been a new position

created during the time of his wrongful termination without just cause, so that he may be awarded it, if the USPS is not successful in their unlawful attempt to wrongfully terminate the employee.

This Petitioner has personal knowledge ~~that~~ **Article 38** ONLY makes provision for employees on **Annual Leave** to be required to contact the USPS to receive notification of any new Postings. This Petitioner was NOT on **Annual Leave**, but was wrongfully terminated from the USPS without just cause and was NOT, by any stretch of the imagination, on **Annual Leave** and required to contact the USPS in writing to request notification of any new positions, when this Petitioner was unlawfully deprived of his own position and collecting Unemployment Compensation from the State of Florida after the State of Florida thoroughly investigated the matter and found this Petitioner to be completely innocent and falsely accused by the USPS and entitled compensation.

This Petitioner, in good faith, being present at the Arbitration conducted on February 7, 2001, witnessed the erroneous testimony that was given by Maintenance Manager Daniel Meyer regarding Article 38, which misinterpreted the National Agreement and that no record was made of this allegedly false testimony.

The Defendants' Motion To Dismiss was clearly premature, baseless, and unwarranted and should not have been granted. Instead, this Petitioner should have been permitted to proceed with his right to Discovery and to take the Depositions of postal officials Daniel Meyer, Harriett Dillhyon, Ron Midkiff, and others, to easily establish, on record, the exact false testimony that was given at the Arbitration on February 7, 2001, so that this

disputed matter could have been properly presented to an impartial jury and lawfully settled as in the Supreme Court Case of Bowen v. United States Postal Service, 459 U.S. 212, 741 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525].

Furthermore, neither lower Court has acknowledged or addressed the fact that the Defendant APWU Attorney Susan Catler stated, in Court and on record, that she was representing both the APWU and the APWU Local No. 1672, NOT the Law Firm of Egan, Lev & Siwica of Orlando, who was conspicuously absent from the Oral Hearing conducted on August 17, 2001, demonstrating further alleged fraud, misrepresentation and dishonesty on the part of the APWU and Local No. 1672 and in its overzealousness to dismiss the Petitioner's Case at all costs, neither lower Court has addressed the fact that both the APWU and Local were properly served fair Notice and both failed to respond to this Petitioner and to the lower Courts in the designated Twenty (20) Days and the Middle District Court should have acted in accordance with the law and awarded this Petitioner's requested remedy by default and not unjustly and irrationally dismiss his case, causing harm.

This Petitioner has personal knowledge that the USPS was ordered to make me whole by Arbitrator Helbum's ruling in Arbitration No. **H94T-1H-D 97064141**, and I am disputing the fact that I have not been made whole and not have been properly placed into the position that I would have been in had there been no violation and based on my Seniority and in accordance with the National Agreement.

This Petitioner has personal knowledge that *The Employee Rights Handbook* written by Steven Mitchell Sack clearly defines a **Make-Whole Remedy** as follows,

. . . This remedy puts you into the position you would have been in had there been no violation of the law. The Defendants have never placed this Petitioner into the position he would have been in had there been no violation of the law, causing this Petitioner great harm and losses that continue and will continue until remedied by the Supreme Court, as in the Supreme Court case of Bowen v. United States Postal Service, 459 U.S. 212, 741 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525].

This Petitioner has personal knowledge and is a witness to the fact that if not for the USPS's adverse actions in **January of 1997**, I would have been employed by the USPS at the time of the new Postings, in or about **July of 1997**, and would have been made aware of, and would have been available to apply for, said newly established craft duty assignment as per **Article 38.5.A.1, 2, & 4** and, due to my **Seniority**, received my Tour 2, Thur./ Fri., Electronics Technician, PS-9, relief position, as per **Article 38.5.A.3(a) of the National Agreement**.

This Petitioner has personal knowledge that during the months of **July and August of 1997**, around the approximate time that said Tour 2, Thur. / Fri., Electronics Technician, PS-9, relief position was posted during the time of my wrongful termination without just cause, I, in an attempt to help the USPS mitigate their damages did, in fact, contact USPS Labor Relations Specialist Ron Midkiff and made reasonable attempts to settle the knowingly false charges that were wrongfully brought against me to willfully cause harm and loss.

This Petitioner, in good faith, is aware that instead of USPS Labor Relations Specialist Ron Midkiff making alleged veiled threats and allegedly using undue influence

and coercion in an unlawful attempt to force me to resign my position with the USPS and to withdraw my legitimate charges, USPS Labor Relations Specialist Ron Midkiff should have, instead, informed me, at that time, that two new Tour 2, Electronics Technician, PS-9, relief positions had just been created and posted at the Daytona Beach Facility and that I should apply for them even though I had been wrongfully terminated without just cause and collecting Unemployment Compensation from the State of Florida.

This Petitioner has personal knowledge that on **January 6, 1997**, I was issued a defective and unlawful Notice Of Removal dated **December 23, 1996**, two (2) weeks after it was written and also was issued instructions by the USPS entitled, Notification Of Employee's Obligation To Mitigate Damages, which this Petitioner complied with all requirements and instructions.

This Petitioner has personal knowledge that nowhere in said USPS instructions did it state that I was instructed to keep contacting the same individuals responsible for my wrongful termination without just cause in the hope that there may, or may not, be new job postings during the time of my wrongful termination without just cause. If such USPS instructions had been issued, I would have complied but as the evidence shows, NO such instructions were ever given by the USPS and Article 38 of the National Agreement makes absolutely NO provision requiring this Petitioner to request in writing to be informed of any new positions created during the time of my wrongful termination by the USPS and only requires employees that are on Annual Leave to give a written request for notification.

This Petitioner has personal knowledge that it would, in no way, have been burdensome to the USPS to provide me with a comparable Tour 2, Thur./Fri., Electronics Technician, PS-9, relief position with out-of-schedule back-pay dating back to August 2, 1997, plus interest and Thrift Savings Plan Contributions (TSP), in order to make me whole, so that the USPS is not unjustly enriched by their wrongful actions.

This Petitioner has personal knowledge that I have never been made whole by being given my **Thrift Savings Plan Contributions (TSP)**, which directly affects my retirement and surely would have been contributed to my Thrift Savings (TSP) with matching funds, absent the USPS's adverse action, since this is one of my employee benefits. Arbitrator Helburn's insistence in Arbitration No. **H98T-1H-C 99231569**, that I should completely disregard the USPS's Typewriter Check Payment Check No. 01904173 dated 07/02/1998, indicating in the section for **TSP** (Thrift Savings Plan) **.00**, clearly showing that absolutely NO contributions of any kind were paid to me in my disputed Back Pay Award and accept the knowingly false statements that have absolutely no basis in fact by USPS Labor Relations Specialist Harriet Dillhyon that I was allegedly paid my TSP (Thrift Savings Plan) simply because USPS Labor Relations Specialist Dillhyon said so, defies logic and is clearly irrational and must be corrected as in the similar case of the Supreme Court case of Bowen v. United States Postal Service, 459 U.S. 212, 741 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525].

This Petitioner has personal knowledge that the USPS has always knowingly and falsely claimed to be allegedly in compliance with the National Agreement in all of the arbitrations that have been awarded to me in the

past and each time the USPS has always been proven to have made false and erroneous statements which were not believed by Arbitrator Jedel in Arbitration No. **SOT-3R-C 2093**; Arbitrator King in enforcement Arbitration No. **H90T-1H-C 94069440**, and Arbitrator Helburn in No. **H94T-1H-D 97064141** and should not have been believed in the enforcement hearing conducted by Arbitrator Helburn since the USPS presented absolutely NO evidence that their knowingly false statements that were not recorded could have any basis in fact or truth, which has caused this Petitioner great harm and loss which the National Agreement protects me from but was unlawfully altered by The Arbitrator in direct violation of the National Agreement.

This Petitioner has personal knowledge that I could not ask for something at Step 1, Step 2, or Step 3 of the Grievance Procedure that occurred respectively in or about January, February, and June of 1997, that did not exist and that was not available nor that I was aware that would be available in July of 1997, since the USPS would be the first to point out and complain that the Grievant was asking for something that does not exist, which at the time of the Step 1, Step 2, and Step 3 of the Grievance Procedure, the Tour 2, Thur./Fri. Electronics Technician, PS-9, relief position did not exist and the Grievant had not been deprived of his Tour 2, Thur./Fri., Electronics Technician, PS-9, relief position yet.

This Petitioner has personal knowledge that I asked to be made whole. Make whole is defined as to be placed were the injured party would have been if the USPS's adverse action had never occurred. Had the USPS not wrongfully terminated me, I would have been at the Daytona Beach Facility at the time of the Posting and I would have submitted my Preferred Assignment Register

for the new Tour 2, Thur./Fri., Electronics Technician, PS-9, relief position and due to my Seniority, I would have been awarded this same position in full compliance with Article 38 of the National Agreement.

This Petitioner has personal knowledge that, citing the Decision of Law Professor Carlton J. Snow in Arbitration No. **W7C-5F-C 23500, for Grievant L. Davis**, conducted on **February 12, 1993**, page 14, paragraph 1, clearly states, **"... This is a dispute about an appropriate remedy, and the U.S. Supreme Court has recognized that when an arbitrator is formulating remedies, '"the need is for flexibility in meeting a wide variety of situations.'" (See, United States Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1964)).**"

This Petitioner has personal knowledge that citing the second Decision of Law Professor Carlton J. Snow in Enforcement Arbitration Nos. **W7C-5F-D 22463 & W7C-5F D 23500, once again, for Grievant L. Davis,** conducted on **April 29, 1994**, Professor Snow rendered excellent explanations as to why Grievant L. Davis should be made whole in her Arbitration Awards and the same laws, logic, and reasons apply to me in order to finally be made whole, so that this matter can finally be put to rest in a legal and proper manner.

This Petitioner has personal knowledge that citing the Decision of Arbitrator Hamah R. King in Arbitration No. **G94C-1G-C98085011(79065)** for Grievant H. Donahou, conducted on **February 15, 2000**, that I have suffered similar great financial loss to my **Thrift Savings Plan (TSP)** covered under the FERS Program due solely to the USPS's wrongful termination without just cause and this

must be remedied in order to finally make me whole so that I do not suffer any further financial harm.

This Petitioner, in good faith, believes that Arbitrator Helburn is well aware, that I never sit on my rights but have always been allegedly intentionally and unlawfully deprived of my rights by the Defendant, USPS's alleged reckless and malicious disregard for my rights and by unexplained gross negligence of the Defendants, APWU and Local 1672, as well as other improper motives due to the personal animosity between Local President Russell Olsen, Business Agent Randy Sutton and myself, caused by the APWU's alleged constant failure to fairly represent me without my having to always take legal action first to force the required representation.

This Petitioner has personal knowledge that on **April 4, 1998**, I reasonably contacted the Daytona Beach Maintenance Manager and informed him that I had just become aware that two Tour 2, Electronics Technician, PS-9, relief positions had been created at the Daytona Beach facility during the time of my wrongful termination without just cause and that this needed to be corrected immediately in order to finally make me whole and to restore me to the correct position that I would have occupied if not for the USPS's wrongful termination without just cause, which the USPS refused to do without just cause, resulting in my suffering additional harm and loss.

This Petitioner has personal knowledge that from **April 4, 1998 to May 13, 1998**, I made every reasonable effort to get Local President Russell Olsen and Business Agent Randy Sutton to take the appropriate action to fully, fairly, impartially and in good faith represent me upon my discovery that two new Tour 2, Electronics Technician, PS-9,

relief positions had been created and posted in July of 1997 during the time of my wrongful termination and awarded to a junior Electronics Technician, in violation of the National Agreement.

This Petitioner has personal knowledge that on **May 13, 1998**, after it was made perfectly clear to me that due to the personal animosity between Local President Russell E. Olsen, Business Agent Randy Sutton, and myself, the APWU and Local had chosen to be allegedly grossly and irrationally negligent in their duties, due to the fact that I was forced by the APWU and Local to have to take previous legal action in Case. No. 97-1530-CIV-ORL-19C, against the APWU and Local in order to force them to take the appropriate action to fully, fairly, impartially, and in good faith represent me in Arbitration No. H94T-1H-D-97064141, which was unreasonably delayed for reasons unexplained. After the APWU and Local allegedly refused to act in a legal and rational manner, I made a reasonable effort to inform Arbitrator Helburn that I was having difficulty getting the USPS to make me whole.

Courtesy copies of same were provided to everyone involved and all accepted their copies except for Local President Russell E. Olsen, who refused to accept his copy sent by **certified mail no. Z127105495**.

This Petitioner has personal knowledge that on **September 11, 1998**, after several more months of verbally attempting to get the Local President to represent me in a fair, and good faith manner, I made a reasonable effort to contact Business Agent Sutton in order to avoid having to file charges against the APWU and Local, again, to force the APWU and Local to represent me in a fair and impartial manner because of my clearly meritorious

grievance. No action was taken by Business Agent Sutton adding to the APWU's and Local's perfunctory and gross negligence.

This Petitioner has personal knowledge that it was not until **January of 2000**, after Local President Russell E. Olsen was voted out of office and replaced by Local President James Mula, that this issue was finally brought to the attention of the USPS by the APWU and Local, **10 months later**, as referred to by Arbitrator Helburn in Arbitration No. **H98T-1H-C 99231569**, causing me great harm and financial loss.

This Petitioner has personal knowledge that in **December of 1999**, I was finally scheduled for arbitration with APWU National Business Agent Randy Sutton representing me before Arbitrator Helburn, but the APWU allowed this to be cancelled without just cause.

This Petitioner has personal knowledge that again, in or about **February of 2000**, I was scheduled for arbitration with APWU NBA Randy Sutton representing me before Arbitrator Helburn, but said second attempt was cancelled without just cause.

This Petitioner has personal knowledge that again, in **June of 2000**, I was scheduled for arbitration with APWU National Business Agent Randy Sutton representing me before Arbitrator Helburn, but said third attempt to arbitrate was allowed to be cancelled.

This Petitioner has personal knowledge that on **June 22, 2000**, I contacted Mr. Greg Bell, APWU Industrial Relations, and informed him of the irrational behavior and alleged gross negligence that was causing me great harm and depriving me of the fair and impartial representation

that I am entitled to but the APWU's and Local's allegedly acting in bad faith has allegedly deprived me of same.

This Petitioner has personal knowledge that on **September 19, 2000**, I contacted Mr. Greg Bell, APWU Industrial elations, and informed him of the irrational behavior and gross negligence that was causing me great harm and depriving me of the fair and impartial representation.

This Petitioner has personal knowledge that on **October 19, 2000**, I contacted Mr. Greg Bell, APWU Industrial Relations, and informed him of the irrational behavior and gross negligence that was causing me great harm and depriving me of the fair and impartial representation.

This Petitioner has personal knowledge that on **October 19, 2000**, I was contacted by APWU Attorney Peter J. Leff, on behalf of Mr. Greg Bell, APWU, and led to believe that Attorney Leff was an agent of the APWU and authorized by the APWU to respond on behalf of the APWU and Local, and I was informed that APWU Business Agent Randy Sutton was always ill when it came time for me to have my arbitration, yet APWU National Business Agent Randy Sutton was never too ill to attend the APWU Convention in West Palm Beach, FL, that was also attended by me or too ill to travel to Washington, DC, and attend the Contract Negotiations.

This Petitioner has personal knowledge that again, on **November 19, 2000, November 29, 2000 and January 3, 2001**, I contacted APWU Attorney Peter J. Leff making reasonable enquiries as to the status of my arbitration that was rescheduled for the FIFTH time, since December of 1999, and led to believe that Attorney Leff was an agent

of the APWU and authorized to respond on behalf of the APWU and Local.

This Petitioner has personal knowledge that on **January 4, 2001**, I received a letter from APWU Attorney Peter J. Leff informing me that my arbitration had been rescheduled for February 7, 2001, and was again led to believe that Attorney Leff was an agent of the APWU and authorized by the APWU to respond on behalf of the APWU, since this was what he was doing as an agent of the APWU. *The Random House American Dictionary* defines an **Agent** as "(noun) 1. Person acting for another."

On **February 7, 2001**, this Petitioner was in attendance at the arbitration that was rescheduled five times and was finally conducted at the Daytona Beach facility and I believe that erroneous testimony was given by USPS Maintenance Manager Daniel Meyer, USPS Labor Relations Specialist Harriet Dillhyon, and USPS Labor Relations Specialist Ron Midkiff and that I should be permitted to proceed with Discovery in order to take their Depositions which I believe would establish this fact, **since there are no affidavits included from these individuals in the APWU's Motion To Dismiss; no official record of their testimony given at said arbitration conducted on February 7, 2001**, and the Defendants Motion To Dismiss is clearly premature and it is a gross abuse of discretion for the District Court to award said Motion To Dismiss before the Petitioner has even had the opportunity to gather substantially more evidence supporting and proving this Petitioner's legitimate allegations in this matter, demonstrating the District Court's biased efforts to shield the Defendants from their liability.

This Petitioner has personal knowledge that on **February 10, 2001**, Arbitrator Helburn gave a blatantly erroneous Decision for Arbitration No. **H98T-1H-C 99231569**, that was clearly outside the context of **Articles 15, 19, and 38** of the National Agreement, which wrongfully deprived me of my Tour 2, Thur/Fri. ET-09 relief position on 8/2/97, and forced me to work out-of-schedule without being fairly compensated, which has unjustly enriched the USPS due to their wrongfully terminating me without just cause.

This Petitioner has personal knowledge that on **February 17, 2001**, I contacted APWU Attorney Peter J. Leff and was again led to believe that Attorney Leff was an agent of the APWU and authorized by the APWU to respond on behalf of the APWU, since this is what he was doing as an agent of the APWU and I informed him of the alleged breach of duty of fair representation that had allegedly occurred and had allegedly been occurring for several years now, as well as Arbitrator Helburn's decision which unlawfully altered and modified the National Agreement in clear violation of Article 15 and recommend that he act in my best interest and fully represent me by moving the matter into Federal Court on my behalf, as Mr. Greg Bell, APWU, did in the Pittsburgh, Brooklyn and Washington, DC, cases in order to correct this, so that I could finally be made whole, due to the harm caused by the USPS's wrongful termination. (Doc 1 pg 17)

This Petitioner has personal knowledge that I further informed in said letter that should APWU Attorney Peter J. Leff agree with the allegedly erroneous Decision based on an interpretation which is allegedly completely outside the National Agreement, then it will be assumed that he also agrees with Arbitrator Helburn's statement of how the

APWU was allegedly grossly negligent and allegedly failed to represent me by waiting ten (10) months to take action, while I immediately and constantly notified everyone of the new Tour 2, Electronics Technician, PS-9 relief positions that were created during the time of my wrongful termination without just cause, as well as all of the other things that are required to finally make me whole and to finally restore me to where I would have been, if the USPS's wrongful actions had never occurred.

This Petitioner has personal knowledge that in said letter to APWU Attorney Peter J. Leff, I further notified him that if he agreed with Arbitrator Helburn's Decision, then I would be forced to proceed with filing a civil action against the APWU in the Middle District Court of Florida, citing the United States Supreme Court Case of ***Bowen v. USPS & APWU***, since I relied on the APWU to represent me in a timely manner and the APWU has always failed or irrationally refused to do so, which has caused me great harm and loss.

This Petitioner has personal knowledge that the only response from the Defendants, APWU and Local, until **May 8th, 2001**, was by Local President Russell E. Olsen, when on **February 28, 2001**, he unlawfully decertified me as the Tour 3 Maintenance Shop Steward without just cause, and in retaliation and in direct violation of **29 U.S.C. 411. (a)(5)**.

REASONS FOR GRANTING THE WRIT

This Petitioner has personal knowledge that citing the case of ***Bowen v. United States Postal Service,* 470 F. Supp. 1127 (1979), which is very similar to the**

events that happened to me and citing 28 U.S.C.A. sec. 1337; Labor Management Relations Act, 1947, sec. 301, 29 U.S.C.A. sec. 185; National Labor Relations Act, sec. 9 as amended 29 U.S.C.A. sec. 159; 39 U.S.C.A. sec 409, the United States Supreme Court ruled in *Bowen v. United States Postal Service,* 459 U.S. 212, 74 L. Ed. 2d 402, 103 S. Ct. 558 [No. 81-525], that the APWU and Local have the duty of fair representation to me which has allegedly been grossly and willfully breached by the APWU and Local whose conduct was arbitrary, discriminatory, and in bad faith and the processing of my meritorious grievance was so perfunctory to be raised to the level of being malicious, reckless and grossly negligent causing me great harm and financial loss, especially to my retirement benefits. This Supreme Court Case clearly demonstrates that not only does this Petitioner have the right in lower Courts to proceed with and to win his case, but also has the right to take this case to the Supreme Court and win.

This Petitioner has personal knowledge as a Tour 3 Shop Steward attending the APWU Training Seminar held in West Palm Beach, FL, that I saw APWU Business Agent Randy Sutton, who was not too ill to attend this three day seminar, and that this was where I was first made aware of the case of ***Bowen v. United States Postal Service***, and instructed by the APWU to make every effort to avoid the exact same perfunctory processing of grievances and malicious, reckless, and gross negligence that I am now alleging the APWU and Local are allegedly guilty of and demonstrating with a large amount of documented physical evidence. This clearly demonstrates that the APWU

and Local knew what was expected of them in their representation of me and that I had the right to expect full, fair, and impartial representation made in good faith, as per the United States Supreme Court ruling, yet, irrationally, and with alleged reckless disregard for my rights permitted Arbitrator Helburn to allegedly alter and modify the National Agreement and then refused to immediately move the matter to Federal Court to have the illegal Decision vacated, as the APWU did in the Brooklyn, Pittsburgh, and DC, cases, as per my reasonable request.

This Petitioner has personal knowledge that I demanded a trial by jury in this matter and as per **Fed. Rule 38 and citing *Chauffeurs, Teamsters & Helpers Local 391 v. Terry*, 110 S. Ct. 1339, 1349 (1990) (Relief in form of backpay for union's alleged breach of duty of representation is legal relief that entitles party to jury trial under Seventh Amendment)** I am entitled to Discovery and then to a trial by jury to fairly resolve this matter.

This Petitioner has personal knowledge that the APWU was properly notified by registered mail of civil action no. 6:01-cv-371-Orl-22JGG being filed against them, as per their instructions given to me as the Tour 3 Maintenance Shop Steward in a copy of their own Policy Manual entitled, *APWU Labor Law, A Workshop Conducted By: Legal Staff Of O'Donnell, Schwartz & Anderson, P.C.* On Page 3, Section 3., Receipt Of Summons And Complaint Or Subpoena states in part, ". . . The same procedure applies when you receive a subpoena in a case, whether or not the APWU is a party. It is imperative that the APWU's attorneys know about the situation immediately, as time for response to a subpoena is often extremely short. Call my office as soon as you receive a subpoena. If you cannot

reach me, **call O'Donnell, Schwartz and Anderson at (202) 898-1707 and tell them that you have received a subpoena.** Do not call or talk to the grievant, the grievant's lawyer or anyone else connected with the case unless directed to do so by the APWU's attorneys . . .," **and that they knew that they had twenty (20) days to respond, which would have been no later than April 20, 2001 but the APWU did not respond to me until May 8th, 2001, and did not even file a response with the District Court until April 25, 2001, a full five (5) days after the time limit expired and in clear violation of Fed. Rule 55(a) & (b)(1).**

This Petitioner has personal knowledge that in December of 2000, as the Tour 3 Maintenance Shop Steward I received a copy of the APWU Memorandum From Greg Bell, Regarding Legal Issues reiterating on page 3, Paragraph 5, that it is appropriate to contact and serve **O'Donnell, Schwartz & Anderson, P.C.** with a Summons, since a reasonable person could determine by their actions stated hereinabove that Attorney Peter Leff and the Law Firm of O'Donnell, Schwartz & Anderson are acting as agents of the APWU and are the Counsel for the APWU and Title 29 Sec. 525, Service Of Process clearly states that, "For the purposes of this chapter, service of summons, subpoena, or other legal process of a court of the United States upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization."

The Defendants' Motion For Summary Judgment was clearly baseless and premature, since this Petitioner has not yet even had an opportunity to begin to conduct Discovery in order to gather even more evidence to present to a jury.

Also, this Petitioner believes that the APWU, once again, demonstrated the type of alleged failure to represent; use of dishonesty and deceit, and to do so with reckless disregard to Union Members' rights, not only in this case, but citing the case of ***Judy A. Johnson v. APWU, ET AL,*** **Case no. 998-5903,** P. 25, "... These comments follow previous false statements made to the courts when the Union Defendants' counsel for the National, **Susan Catler**, gave false testimony, claiming as though I was a "convicted felon", as their basis for not allowing me to hold office in the union ... **National Attorney Catler** responded **"I mean, all it is, is this – you know, if you get convicted of a felony, you don't get to run"** (Vol. 3, Dkt. 108, Page 63, Lines 10-19). Catler made this deliberate false statement to the court knowing that I have never been charged with a crime or arrested in this case (or any other – See Affidavit Johnson) and, her knowledge from representing postal workers, that I would not be allowed Federal employment if I had, just so that she could win the Injunction filed for my right to run for and hold office in the union. This statement, falsely made, was also in open court, and has become a matter of the record of the courts, with the right to public review and copies to be used against me, though falsely stated. It has caused me great harm, and has resulted in numerous slander, libel and reckless disregard committed against my name and reputation."

APWU Attorney Susan Catler has set a pattern of making knowingly false statements in open court and made several false statements at this Petitioner's Oral Hearing, which would be easy to prove to an impartial jury.

This Petitioner has always acted in good faith, backed by thousands of pages of documented physical evidence, and has always filed legitimate charges in accordance with Federal Law: the Constitution and the Common Law and, citing the case of ***Trevino v. Celanese Corp.*, 701 F.2d 397 (1983)** should be permitted to proceed with his case in order to protect this Petitioner's Constitutional Rights, since this Petitioner's Constitutional Rights clearly take precedence over the comfort, convenience, or personal biases of the lower Courts. To state otherwise, would be reckless and irrational.

The similar case of *Earnest Diamond v. William J. Henderson, USPS,* Northern District Of Illinois (Chicago) Case No. 99-cv-2893 (Jury verdict entered on 02/07/02) clearly established this Petitioner's right to equal protection under the law and an equal right to a trial by jury in this similar matter.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted by this Honorable Court. Respectfully submitted on this 3rd day of December, 2002.

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10682
Non-Argument Calendar

D.C. Docket No. 01-00371-CV-ORL-22

FRANK L. FARROW,

Plaintiff-Appellant.

versus

THE AMERICAN POSTAL WORKERS,
Union AFL-CIO,
AMERICAN POSTAL WORKERS UNION,
Local No. 1672, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Jul. 31, 2002)

Before ANDERSON, DUBINA and FAY, Circuit Judges.

PER CURIAM:

Frank L. Farrow filed a *pro se* complaint, pursuant to the Postal Reorganization Act, 39 U.S.C. § 1208(b), alleging a breach of the duty of fair representation by the American Postal Workers Union AFL-CIO and the American Postal Workers Union Local No. 1672 (union defendants), and a breach of the collective bargaining agreements (CBA)

by John E. Potter, Postmaster General, U.S. Postal Service (employer defendant). Farrow appeals from the district court's grant of summary judgment, pursuant to Fed.R. Civ.P. 56, in favor of all of the defendants. On appeal, Farrow argues that the court erred in (1) finding that no genuine issue of material fact existed as to whether the union defendants fairly represented Farrow in arbitrating his grievance, and that the union and employer defendants were entitled to judgment as a matter of law, pursuant to Fed.R.Civ.P. 56, (2) dismissing the action before he completed discovery, and (3) denying his motions for a default judgment.

As discussed above, Farrow contends that the district court erred in granting summary judgment in favor of the defendants. He asserts that their conduct in processing his grievance was arbitrary, discriminatory, in bad faith, and perfunctory. We review a district court's grant of summary judgment *de novo*, viewing the evidence in the light most favorable to the party opposing the motion. *Coppage v. U.S. Postal Service*, 281 F.3d 1200, 1203 (11th Cir. 2002).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). A party moving for summary judgment has the burden of showing that there is no genuine issue of fact. *Eberhardt v. Waters*, 901 F.2d 1578, 1580 (11th Cir. 1990). A party opposing a properly submitted motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a

genuine issue for trial. *Id.* A material fact is one that might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986).

Postal unions are subject to district court actions by 39 U.S.C. § 1208(b), instead of 29 U.S.C. § 185(a), the provision covering private sector employees. 39 U.S.C. § 1208(b). Nevertheless, the same principles in § 185(a) cases, brought pursuant to the Labor Management Relations Act, apply in postal cases, filed pursuant to the Postal Reorganization Act. *American Postal Workers Union, AFL CIO v. U.S. Postal Service*, 823 F.2d. 466, 469 (11th Cir. 1987).

Farrow's complaint alleged that the employer defendant breached its obligations under the employment contract and that the union defendants breached their duties of fair representation. As this claim was comprised of two causes of action that are inextricably interdependent, the district court correctly determined that his claim was a hybrid § 301/fair representation claim. *DelCostello*, 462 U.S. at 165, 103 S.Ct. at 2291; *Coppage*, 281 F.3d at 1203-04. The Supreme Court has held that, to prevail against either the union or employer defendant in a hybrid case, the plaintiff must prove both that the union breached its duty of fair representation and the employer breached its contractual duty. *DelCostello*, 462 U.S. at 165, 103 S.Ct. at 2291.

Pursuant to the duty of fair representation, a union must represent fairly the interests of all bargaining-unit members during the negotiation, administration, and enforcement of CBAs. *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 47, 99 S.Ct. 2121,

2125, 60 L.Ed.2d 698 (1979). A union breaches its duty of fair representation in the context of grievance processing if its actions are either "arbitrary, discriminatory, or in bad faith." *Air Line Pilots Ass'n, Intern. v. O'Neil*, 499 U.S. 65, 67, 111 S.Ct. 1127, 1130, 113 L.Ed.2d 51 (1991) (citing to *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S.Ct. 903, 916, 17 L.Ed.2d 842 (1967)); *Parker v. Conners Steel Co.*, 855 F.2d 1510, 1520 (11th Cir. 1988) (noting that examples would include when a union arbitrarily ignores a meritorious grievance or is perfunctory in its processing of the grievance), *cert denied*, 490 U.S. 1066 (1989).

As the grievance and arbitration process is not conducted in a judicial forum and union representatives are not held to strict standards of trial advocacy, a union is allowed considerable latitude in its representation of employees. *Parker*, 855 F.2d at 1520. Neither negligence on the part of the union nor a mistake in judgment is sufficient to support a claim that the union acted in an arbitrary and perfunctory manner. *Id.*, at 1521. In addition, a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness as to be irrational." *Air Line Pilots Ass'n*, 499 U.S. at 67, 111 S.Ct, at 1130.

Courts generally are foreclosed from reviewing the merits of an arbitrated dispute and must defer to the determinations of the arbitrator. *See Major League Baseball Players Ass'n v. Carvey*, 532 U.S. 504, 509-10, 121 S.Ct. 1724, 1728, 149 L.Ed.2d 740 (2001) (citing to *United Steelworkers v. American Manufacturing, Co.*, 363 U.S. 564, 568, 80 S.Ct. 1343, 1346, 4 L.Ed.2d 1403 (1960)).

Because the defendants showed that any delay in arbitration was not "arbitrary, discriminatory, or in bad faith," and that the defendant's decision not to sue to vacate an unfavorable arbitration was not irrational, the district court did not err in finding that the union defendants fairly represented Farrow. Furthermore, as the district court also did not err in finding that it did not need to decide, as a matter of law, whether the employer defendant breached the CBA, the court did not err in entering summary judgment in favor of the union and employer defendants.

Farrow also argues on appeal that the trial court erred in prematurely granting the defendants' motions for summary judgment, before Farrow could conduct discovery and present evidence gathered through discovery to a jury. We review for abuse of discretion a court's decision to rule on a summary judgment motion without allowing the plaintiff to complete desired discovery. *Leigh v. Warner Bros. Inc.*, 212 F.3d 1210, 1214 (11th Cir. 2000).

Federal Rule of Civil Procedure 56(f) allows courts to defer ruling on summary judgment motions until the non-moving party has been able to conduct all necessary discovery. Fed.R.Civ.P. 56(f). While it generally is inappropriate for a court to rule on a summary judgment motion when the non-moving party has been unable to obtain discovery, we have refused to "adopt [a] blanket prohibition on the granting of summary judgment motions before discovery." *Reflectone, Inc. v. Farrand Optical Co., Inc.*, 862 F.2d 841, 843 (11th Cir. 1989). A party must be able to show a substantial harm to its case from the denial of its requests for additional discovery. *Leigh*, 212 F.3d at 1219.

The party seeking to use Fed.R.Civ.P. 56(f) "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts, but rather he must specifically demonstrate how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact." *Reflectone*, 862 F.2d at 843 (internal citations omitted). Furthermore, a court may grant summary judgment without the parties having conducted discovery if the opponent has not sought discovery by making a motion under Rule 56(f) or if the court has, in the valid exercise of its discretion, denied such a motion. *Id.* at 944 (holding that, as courts cannot read minds, the party opposing the motion for summary judgment bears the burden of calling to the district court's attention any outstanding discovery); *see also Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 859 F.2d 865, 871 (11th Cir. 1988) (holding that, while we do not require a formal affidavit to invoke the protections under Rule 56(f), the party opposing summary judgment bears the burden of calling to the district court's attention any outstanding discovery).

Because "Farrow did not specifically demonstrate how postponement of a ruling on the motion would enable him, by discovery or by other means, to rebut the movant's showing of the absence of a genuine issue of fact as to whether the duty of fair representation was breached, the district court did not abuse its discretion in granting the defendants summary judgment prior to the completion of discovery.

Finally, Farrow contends that the district court erred in denying his motions for a default judgment against the union defendants. The union defendants object to our

review of these orders, arguing that Farrow failed to include them in his notice of appeal (NOA). As filing a timely NOA is mandatory and jurisdictional, we are without jurisdiction to review a decision on its merits in the absence of a NOA. *Bogle v. Orange County Board of County Commissioners*, 162 F.3d 653, 660 (11th Cir. 1998). Federal Rule of Appellate Procedure 3 governs the required contents of a NOA and demands that the notice "designate the judgment, order, or part thereof appealed from." Fed.R.App. P. 3(c)(1)(B).

Nevertheless, when a district court enters a final judgment, all prior non-final orders and ruling which produced the judgment are merged into the judgment and subject to review on appeal. *Rinaldo v. Corbett*, 256 F.3d 1276, 1280 (11th Cir. 2001). The denial of a motion for default judgment is not a final appealable order. *Massachusetts Cas. Ins. Co. v. Forman*, 469 F.2d 259, 260 n.1 (5th Cir. 1972), *cert. denied*, 424 U.S. 914 (1976).[1] Accordingly, as Farrow appealed the court's order granting the defendants summary judgment, and the court's prior non-final orders denying his motions for default judgment produced this judgment, these prior orders also are subject to review on appeal.

Pursuant to Fed.R.Civ.P. 55, the entry of a default judgment is appropriate when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by the Rules of Civil

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[1] In *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207-08 (11th Cir. 1981) (*en banc*), this Court adopted as precedent all decisions of the former Fifth Circuit Court of Appeals decided prior to October 1, 1981.

Procedure. Fed.R.Civ.P. 55(a). A court's exercise of its authority to grant a default judgment is discretionary and is subject to review for abuse of discretion. *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). As the court has available to it a wide range of lesser sanctions, entry of judgment by default is a drastic remedy which should be used only in extreme situations. *Id.* In addition, default judgments are seen with disfavor because of the strong policy of determining cases on their merits. *Florida Physicians' Ins. Co., Inc, v. Ehlers*, 8 F.3d 780, 783 (11th Cir. 1993).

Because the union defendants in this case contested whether Farrow properly had served them, the union defendants, nevertheless, filed their dispositive motions within a short time after Farrow claimed he completed service and before the court entered a default judgment, and Farrow failed to allege that the union defendants' delay in responding to his complaint prejudiced him and that exceptional circumstances justifying the entry of a default judgment were present, the (district court did not abuse its discretion in denying Farrow's motions for a default judgment.

The record fully supports the Report and Recommendation of the United States Magistrate Judge which was adopted by the district judge. For the reasons stated therein and in accord with our conclusions stated here, we affirm the district court's grant of summary judgment in the defendants' favor and denial of Farrow's motions for a default judgment.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10682-EE

FRANK L. FARROW,

Plaintiff-Appellant,

versus

THE AMERICAN POSTAL WORKERS,
Union AFL-CIO,
AMERICAN POSTAL WORKERS UNION,
Local No. 1672,
JOHN E. POTTER,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Oct. 22, 2002)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19___, ___ F.2d ___).

Before: ANDERSON, DUBINA and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Ruling 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/s/ Peter Fay
UNITED STATES CIRCUIT JUDGE